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In Re Applications of:)	
)	GC Docket No., 95-172
RAINBOW BROADCASTING)	
COMPANY)	File No. BMPCT-910625KP
)	File No. BPMCT-910125KE
For an Extension of Time to)	File No. BTCCT-911129KT
Construct,)	
)	
and)	
)	
For an Assignment of its)	
Construction Permit for)	
Station WRBW(TV),)	
Orlando, Florida)	

Volume: 9

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Date: July 11, 1996

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1220 L Street, NW, Suite 600
Washington, D.C.
(202) 628-4888

APPEARANCES: (Continued)

On Behalf of Rainbow Broadcasting Company:

BRUCE EISEN, ESQUIRE
 Kay, Scholer, Fierman, Hayes & Handler, LLP
 901 Fifteenth Street, Northwest
 Washington, D.C. 20005
 (202) 682-3500

On Behalf of Rainbow Broadcasting, Ltd.:

MARGOT POLIVY, ESQUIRE
 KATRINA RENOUF, ESQUIRE
 Renouf & Polivy
 1523 Sixteenth Street, Northwest
 Washington, D.C. 20036
 (202) 265-1807

On Behalf of Press Broadcasting Co., Inc.:

HARRY F. COLE, ESQUIRE
 ANN C. FARHAT, ESQUIRE
 Bechtel & Cole, Chartered
 1901 L Street, Northwest, Suite 250
 Washington, D.C. 20036
 (202) 833-4190

On behalf of the Witness:

ROBERTO IRAOLA, ESQUIRE

1010

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Paul R. Gordon (Rebuttal)	1014	1023 1048	--	--	--

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Press:</u>			
19	1050	1058	
20	1057	1058	
21	1057	1058	
22	1058		1060

Rainbow:

133	1012	1013
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Hearing Began: 9:00 a.m.

Hearing Ended: 10:31 a.m.

P R O C E E D I N G S

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JUDGE CHACHKIN: May I have the appearances of the parties? On behalf of Rainbow Broadcasting Company?

MR. EISEN: Bruce Eisen, Kay, Scholer, Fierman, Hays & Handler.

JUDGE CHACHKIN: On behalf of Rainbow Broadcasting, Limited?

MS. POLIVY: Margot Polivy and Katrina Renouf, of Renouf & Polivy.

JUDGE CHACHKIN: On behalf of Press Broadcasting, Inc.

MR. COLE: Harry Cole, Bechtel & Cole, Chartered.

JUDGE CHACHKIN: And on behalf of Designated Trial Staff?

MR. SILBERMAN: David Silberman.

JUDGE CHACHKIN: All right, the purpose of this session is to permit Press to put on its rebuttal case. The Designated Trial Staff has indicated that it does not propose to put on a rebuttal case.

Are there any preliminary matters before we begin?

MS. POLIVY: Yes, Your Honor, I have one.

At the hearing, last hearing session, Press Broadcasting Hearing Exhibit No. 17 was an excerpt from deposition of Joseph Rey conducted in the Rey v Guy Gannett Publishing Company. It was a one page excerpt of page 130.

1 Well, it was also page 1, but 130 was the page that was
2 designated.

3 You, in response to our request, gave us leave to
4 designate any other page that we wanted to include. We
5 would like, Your Honor, to include page 131. It's the
6 continuation of that discussion that was had regarding the
7 antenna slot.

8 JUDGE CHACHKIN: Do you have copies?

9 MS. POLIVY: Yes, I do.

10 JUDGE CHACHKIN: Thank you.

11 MS. POLIVY: I am not sure what the number is,
12 Your Honor.

13 JUDGE CHACHKIN: I think 12 was your last one.

14 MS. POLIVY: This would be 13 then?

15 JUDGE CHACHKIN: Yes.

16 MS. POLIVY: I ask then that the two-page exhibit
17 entitled "Deposition of Joseph Rey" be marked for
18 identification as Rainbow Exhibit 13 and --

19 JUDGE CHACHKIN: The document will be so marked.
20 Go ahead. Sorry.

21 (The document referred to was
22 marked for identification as
23 Rainbow Exhibit No. 13.)

24 MS. POLIVY: That's okay. It consists of page 1
25 of the deposition and page 131, which is the continuation of

1 Press Exhibit 17. I ask that it be received in evidence.

2 JUDGE CHACKIN: Any objection?

3 MR. COLE: None, Your Honor.

4 MR. SILBERMAN: None, Your Honor.

5 I have a question of clarification.

6 There were Rainbow Broadcasting Company and
7 Rainbow Broadcasting, Limited Joint Exhibits. Is this on
8 behalf of Rainbow Broadcasting Company or Rainbow
9 Broadcasting, Limited.

10 MS. POLIVY: We have put in all of the exhibits
11 jointly to keep the numbers going consecutively.

12 MR. SILBERMAN: So this is a joint exhibit of both
13 the Rainbows?

14 MS. POLIVY: It's a joint exhibit. They are all
15 joint exhibits.

16 MR. SILBERMAN: Okay.

17 MS. POLIVY: Because the numbers go consecutively.

18 MR. SILBERMAN: Thanks.

19 JUDGE CHACKIN: Hearing no objection, Rainbow
20 Joint Exhibit No. 13 is received.

21 (The document referred to,
22 having been previously marked
23 for identification as Rainbow
24 Exhibit No. 13, was received
25 in evidence.)

1 MS. POLIVY: Thank you, Your Honor.

2 JUDGE CHACHKIN: Mr. Cole.

3 MR. COLE: Your Honor, Press would like to present
4 as its first witness, Mr. Paul Gordon.

5 JUDGE CHACHKIN: Mr. Gordon. Raise your right
6 hand, please.

7 Whereupon,

8 PAUL R. GORDON

9 having been first duly sworn, was called as a
10 witness herein and was examined and testified as follows:

11 JUDGE CHACHKIN: Please be seated.

12 REBUTTAL DIRECT EXAMINATION

13 BY MR. COLE:

14 Q Mr. Gordon, could you state your name and address
15 for the record, please?

16 A My name is Paul Robert Gordon, G-O-R-D-O-N. My
17 address is 1608-A Belmont Street, Northwest, Washington,
18 D.C.

19 Q Mr. Gordon, are you an attorney by training?

20 A Yes, I am.

21 Q What is your current position, employment
22 position?

23 A I am an attorney in the Policy and Rules Division
24 of the Mass Media Bureau of the FCC.

25 Q And as of the period January to August 1993, what

1 was your employment?

2 A I was an attorney in the Television Branch of the
3 Video Services Division of the Mass Media Bureau.

4 Q And how long have you served as an attorney in the
5 Video Services Division as of August of '93?

6 A I started in April of 1991. So I guess two and a
7 half years; two, two and a half.

8 Q And you worked continuously from April of '91 to
9 August '93 in the Video Services Division as an attorney; is
10 that correct?

11 A Yes.

12 Q Mr. Gordon, are you appearing here today pursuant
13 to a subpoena that was served on you?

14 A Yes.

15 Q And are you represented by counsel here today?

16 A Yes.

17 JUDGE CHACHKIN: Does Mr. Gordon's counsel want to
18 identify himself?

19 MR. IRAOLA: Good morning, Your Honor. I am
20 Roberto Iraola, I-R-A-O-L-A, for Mr. Gordon.

21 JUDGE CHACHKIN: You can sit at one of the seats.

22 MR. IRAOLA: Thank you, Your Honor.

23 JUDGE CHACHKIN: Mr. Iraola, are you familiar with
24 Section 1.27 which lists the rights of counsel when a
25 witness is subpoenaed?

1 MR. IRAOLA: Generally, Your Honor. I haven't
2 reviewed it lately, but I am generally familiar with it.

3 JUDGE CHACHKIN: All right.

4 Go ahead, Mr. Cole.

5 MR. COLE: Thank you, Your Honor.

6 BY MR. COLE:

7 Q Mr. Gordon, the hearing in connection with which
8 we are conducting this examination involves or reflects in
9 its caption three applications which were filed in 1991 by
10 Rainbow Broadcasting Company; two of which sought extensions
11 of Rainbow Broadcasting Company construction permit for
12 Channel 65 in Orlando; and the third of which sought a
13 consent to an assignment of a license from Rainbow
14 Broadcasting Company or Rainbow Broadcasting, Limited.

15 Are you familiar with those applications?

16 A Yes, I am.

17 Q Could you please describe for the Court how you
18 came to be familiar with those applications?

19 A The first application, the reconsideration of the
20 fifth extension of time, was assigned to me, along with the
21 sixth extension of time application, assigned to me as the
22 lead attorney on those applications.

23 And when the sales application came in, that was
24 associated with the other applications.

25 Q What were your responsibilities with respect to

1 those three applications?

2 A My responsibilities were to read the pleadings,
3 make a legal determination and write a draft as to what the
4 Commission action should be on these applications.

5 Q Do you recall when these were assigned to you?

6 You said the applications were assigned to you.

7 Do you recall when they were assigned to you, approximately?

8 A 1992 or before.

9 Q Now, you mentioned pleadings that were filed with
10 respect to those applications.

11 Were you familiar with the pleadings filed by
12 Press Broadcasting Company in connection with those
13 applications, the Rainbow applications we are discussing?

14 A Yes.

15 Q And when did you become familiar with them,
16 approximately?

17 A When I was assigned the case the pleadings were
18 already there.

19 Q Prior to July 1 of 1993, did you have any oral
20 communications with anyone acting on behalf of Rainbow
21 Broadcasting Company concerning whether the RBC applications
22 constituted a restricted proceeding within the meaning of
23 the FCC ex parte rules?

24 A Yes, I did.

25 Q About how many such communications did you have,

1 if you recall?

2 A At least three or four.

3 Q Do you recall when they were, when those occurred?

4 A I don't remember the exact dates. The first one
5 was several months before July 1st. It could have been up
6 to a year before July 1st of '93.

7 Q Who did you communicate with in these
8 communications? Who represented Rainbow Broadcasting
9 Company in these communications you just mentioned?

10 A Margot Polivy.

11 Q Did anyone communicate with you other than Margot
12 Polivy concerning these applications on behalf of Rainbow?

13 A I don't remember.

14 Q So you had at least three conversations with
15 Margot Polivy concerning the Rainbow applications and
16 whether or not they were restricted under the ex parte
17 rules.

18 Is that your testimony?

19 A That is correct.

20 Q Let's start with the first of those, of the
21 communications you do recall.

22 Was that by telephone or was it in person?

23 A Telephone.

24 Q Did you place the call or did Ms. Polivy place the
25 call?

1 A Ms. Polivy placed the call.

2 Q Was there anyone else on the telephone
3 conversation besides you and Ms. Polivy, to your knowledge?

4 A No.

5 Q And during that telephone conversation the topic
6 of the ex parte rules arose; is that correct?

7 A Yes.

8 Q Could you describe that aspect of -- well, why
9 don't you describe the entire conversation, please,
10 including particularly the aspect concerning the ex parte
11 rules?

12 A Ms. Polivy called to find out the status of the
13 applications, when she could expect the Commission to act on
14 that application. And I answered her.

15 And then she started talking about the merits of
16 Rainbow's case. And at that point I cut her off. And I
17 said, "This is a restricted proceeding. The ex parte rules
18 are in effect, and we cannot discuss the merits of the
19 applications."

20 And Ms. Polivy told me that she believed this was
21 not restricted. The ex parte rules did not apply, and that
22 we could discuss the merits of the applications.

23 I repeated my assertion that the ex parte rules
24 did apply. She repeated her assertion that they didn't
25 apply. I said it was clear that we didn't agree on this,

1 and I refused to listen to anything having to do with the
2 merits. So I terminated the conversation.

3 Q Now, that was the first conversation you had with
4 her that you have testified about this morning.

5 Do you recall when the second conversation with
6 Ms. Polivy concerning ex parte restrictions occurred?

7 A Again, I don't remember exact dates. They were
8 spaced out in those few months before June 18th of '93. So
9 I don't remember an exact date.

10 Q Could you describe the second conversation for us,
11 please?

12 A The second conversation was identical to the
13 first. Ms. Polivy called to find out when she could expect
14 us to act on the applications. I responded. She began to
15 discuss the merits of the application. I cut her off. I
16 told her this was restricted, and we could not discuss the
17 merit. She again expressed her belief that the ex parte
18 rules did not apply. I repeated my view. She repeated her
19 view. I said it was clear that we weren't going to agree on
20 that, and that I was not going to listen to anything having
21 to do with the merits of the case, and I terminated the
22 call.

23 Q Do you recall when your next conversation with Ms.
24 Polivy was following that second conversation you just
25 described?

1 A Once again, this was three years ago so I don't
2 remember exact dates. These conversations were spaced in
3 those months preceding the June 18, 1993.

4 Q Could you describe the -- strike that.

5 But am I correct that your testimony this morning
6 is that there were at least three such conversations?

7 A Correct.

8 Q Could you describe the third such conversation?

9 A The third conversation was identical to the first
10 and the second.

11 Ms. Polivy called, status inquiry. I responded.
12 She began to discuss the merits. I cut her off and said we
13 couldn't discuss them because the matter was restricted.
14 She repeated her assertion that we could discuss the merits.
15 Again I said that I believed it was restricted, and that I
16 was not going to discuss the merits. She repeated her
17 belief that the ex parte rules did not apply, and that we
18 could discuss the merits of the applications. And I said it
19 was clear we couldn't agree on this. I would not discuss
20 the merits, and I terminated the call.

21 Q Did you have any further conversation with Ms.
22 Polivy after those first three about which you have
23 testified concerning the ex parte restrictions and their
24 applicability to the Rainbow applications?

25 A Yes, I did.

1 Q How many conversations did you have after the
2 first three?

3 A At least one.

4 Q Would you describe that conversation?

5 A On June 18, the Video Services Division released
6 its letter disposing of the applications. And I called up
7 the counsel representing Rainbow and the counsel
8 representing Press to inform them that this letter had just
9 been signed and stamped.

10 So I called Ms. Polivy, and I informed her that a
11 decision had been made, and that if she wanted to she could
12 come pick up a copy of the letter because it would take a
13 few days for her to get it in the mail.

14 She asked me what the outcome was, and I told her,
15 and she began to discuss the merits of our holding. I cut
16 her off. And I told her this was restricted. We couldn't
17 discuss it. She said it wasn't restricted. We could
18 discuss it. And I terminated the conversation.

19 Q Other than those four conversations about what you
20 have testified this morning, do you recall any other
21 conversations that you had with Ms. Polivy concerning ex
22 parte restrictions relative to the Rainbow applications?

23 A I don't remember.

24 Q Did you have any conversations with Ms. Polivy or
25 anyone else representing Rainbow concerning the

1 applicability of the ex parte rules to the RBC applications
2 on July 1, 1993?

3 A No.

4 MR. COLE: I have no further questions, Your
5 Honor.

6 JUDGE CHACHKIN: Mr. Eisen.

7 REBUTTAL CROSS-EXAMINATION

8 BY MR. EISEN:

9 Q Good morning, Mr. Gordon. We met at the June 5,
10 1996 deposition. I represent Rainbow Broadcasting Company.

11 In a couple of responses to Mr. Cole's questions
12 you mentioned that you discussed the merits, or that Ms.
13 Polivy tried to discuss the merits with you in these
14 telephone conversations that you say you had with her.

15 What merits were you referring to?

16 A I'm referring to reasons that the Commission
17 either should grant applications or deny applications.

18 Q Do you recall specifically what she said?

19 A As far as the merits?

20 Q Yes.

21 A I do not.

22 Q Do you recall generally what she said?

23 A I don't remember.

24 Q Well, then, how can you say she discussed the
25 merits?

1 A This was -- these were all more than three years
2 ago, and I don't remember specifics such as that. I cut her
3 off each time, so I do not remember the specifics of what
4 she said.

5 Q But you said that Ms. Polivy attempted to discuss
6 the merits of the Rainbow applications.

7 Is it your testimony that you can't recall what
8 the substance of those merits were that she discussed?

9 A That's right.

10 Q Are you sure she didn't just ask about the status
11 of the applications?

12 A Yes, I am sure.

13 Q And why are you so sure?

14 A Because I remember cutting her off and telling her
15 that we could not discuss the merits.

16 Q Well, that's another thing, Mr. Gordon. You said
17 you terminated the conversation.

18 What do you mean, you terminated the conversation?
19 What exactly did you do to terminate it?

20 A After I said that I wouldn't listen to anything
21 more having to do with the merits, and that we couldn't
22 agree on whether the proceeding was restricted or not, I
23 told her there was no point in talking anymore, and that I
24 was going to end the call. And at that point I hung up.

25 Q Did you make any contemporaneous notes of these

1 conversations?

2 A No.

3 MR. COLE: Objection, Your Honor.

4 JUDGE CHACHKIN: Overruled.

5 BY MR. EISEN:

6 Q Your answer was, no, you did not?

7 A No, I did not.

8 Q I believe you said that you came to the FCC in
9 April of 1991; is that right?

10 A Correct.

11 Q What were you doing before that?

12 A I was a law student.

13 Q When did you graduate law school?

14 A 1991.

15 Q 1991?

16 A I graduated in February of 1991.

17 Q So you came to the FCC approximately two months
18 later?

19 A Correct.

20 Excuse me. That's right.

21 Q And by the time that you initially drafted this
22 June 18, 1993 letter, you had been working in the TV branch
23 for over two years; is that right?

24 A That's correct.

25 Q Can you generally describe what your duties were

1 in the Mass Media Bureau between April of 1991 and June 18,
2 1993?

3 A I was assigned various types of applications,
4 including the sales of television stations, extensions of
5 time to construct television stations, waivers of areas,
6 Commission rules involved in those types of applications,
7 reconsiderations and applications for review of those types
8 of applications.

9 And my responsibility was as lead attorney to go
10 through all the pleadings, go through the applications, make
11 a legal reasoning as to what the Commission should do, and
12 to write and draft opinion.

13 Q So is it fair to say that you drafted many letters
14 similar to the June 18, 1993 letter?

15 A I drafted many letters having to do with
16 extensions of time.

17 Q Did many of these letters that you drafted also
18 resolve applications proceedings?

19 A Yes.

20 Q Did they also resolve any contested applications?

21 A Yes.

22 Q Any idea between April '91 and June 18, 1993, as
23 to how many letters you drafted to resolve application
24 proceedings?

25 A I don't remember.

1 Q More than 20?

2 MR. COLE: Objection. He testified he didn't
3 remember.

4 JUDGE CHACHKIN: Overruled.

5 THE WITNESS: At least half a dozen.

6 BY MR. EISEN:

7 Q At least half a dozen?

8 A At least half a dozen.

9 Q But would it have been more than 20?

10 A I do not believe so.

11 Q Okay. And between April of 1991 and June 18,
12 1993, did you believe you were doing a good job in the Video
13 Services Division?

14 MR. COLE: Objection. Irrelevant.

15 JUDGE CHACHKIN: Sustain.

16 MR. EISEN: Your Honor, I am trying to lay some
17 foundation.

18 JUDGE CHACHKIN: His doing a good job is
19 irrelevant.

20 MR. EISEN: I am trying to lay some foundation
21 questions, Your Honor.

22 I mean, this witness has given testimony under
23 oath that's diametrically opposed to some very important
24 aspects to what Ms. Polivy has said and to what other people
25 have said under oath. I am trying to lay some foundation.

1 JUDGE CHACHKIN: Well, I think you are wrong on
2 that. The only one who has testified under oath is Ms.
3 Polivy and Mr. Gordon.

4 MR. EISEN: Well, I am talking about --

5 JUDGE CHACHKIN: And they are the only two privy
6 to the conversations.

7 MR. EISEN: Well, other people --

8 JUDGE CHACHKIN: As far as testimony has shown,
9 they were the only two privy to the telephone
10 communications.

11 MR. EISEN: Other people --

12 JUDGE CHACHKIN: I don't know about other people.
13 As far as these communications are concerned, the only two
14 persons who participated, so far as the testimony shows, is
15 Ms. Polivy and Mr. Gordon.

16 MR. EISEN: I understand.

17 I was referring to what we had identified as
18 Rainbow Broadcasting Company Exhibit 2 that you excluded
19 from --

20 JUDGE CHACHKIN: It has no bearing at all --

21 MR. EISEN: I understand, Your Honor.

22 JUDGE CHACHKIN: -- on the specific conversations.

23 MR. EISEN: But what I am trying to do is lay a
24 foundation here to show that this witness's credibility is
25 very much in doubt.

1 JUDGE CHACHKIN: Whether he believed he was doing
2 a good job or not has no bearing on his credibility.

3 MR. EISEN: It's a foundation question, Your
4 Honor.

5 JUDGE CHACHKIN: Well, I will sustain the
6 objection to that particular question.

7 BY MR. EISEN:

8 Q Is it true, Mr. Gordon, that ultimately the
9 position that you drafted for the June 18, 1993 letter was
10 rejected by the Commission?

11 MR. IRAOLA: Your Honor, I would like to object to
12 that. As I understand it from having read your order of
13 April 2nd and the Commission's subsequent order of May 13,
14 the relevance of the questioning with respect to Mr. Gordon
15 is strictly limited to contacts he had with these parties
16 via-a-vis the application of the ex parte rules.

17 I believe that the same restrictions apply to this
18 proceeding, and that question, Your Honor, is not relevant
19 to the inquiry.

20 JUDGE CHACHKIN: Do you have any --

21 MR. EISEN: Yes, I would like to respond to that.

22 The question here is Ms. Polivy's intent. And the
23 reason that there is an issue here is largely because Mr.
24 Gordon has made certain statements previously that Ms.
25 Polivy and he discussed the ex parte rules, a matter which

1 she firmly rejected in her examination.

2 I believe I am entitled to cross-examine this
3 witness to show whether or not he had any motive as to say
4 things that were untrue. I mean, the ultimate fact under
5 this issue is whether or not Ms. Polivy did discuss with Mr.
6 Gordon the merits of a restricted proceeding. She says she
7 didn't. He says he did.

8 I think I am entitled to at least raise questions
9 to impeach his testimony.

10 JUDGE CHACKIN: But what does the fact of whether
11 or not his position was ultimately rejected insofar as the
12 merits of this case have to do with his credibility?

13 MR. EISEN: Well, I think it has a lot to do with
14 his credibility because if he had a motive to say things
15 that resulted in the issue that were not true, then it's
16 directly related to whether or not Ms. Polivy made the
17 statements that he said she did.

18 JUDGE CHACKIN: I completely don't understand any
19 connection between the fact --

20 MR. EISEN: Well, if this witness were upset, Your
21 Honor, at the fact that his position in the June 18 letter
22 had been rejected by the Commission, rejected by the Bureau,
23 it seems to me that given the fact that so many other people
24 who have testified in this proceeding, not before you, but
25 in sworn statements, have contradicted his testimony --

1 JUDGE CHACHKIN: Contradicted his testimony as to
2 what?

3 MR. EISEN: As to whether or not they had
4 discussions regarding ex parte communications of the staff
5 persons and Mr. Gordon; as to whether or not they believed
6 his position in the June 18, 1993 letter was true or
7 correct.

8 There is a lot of very significant points in these
9 affidavits that he rejected that is totally at odds with
10 this witness's position, and I think just by that very fact
11 it shows that his credibility is an issue.

12 JUDGE CHACHKIN: I totally disagree. If you have
13 any testimony whereby this witness made a statement to any
14 Commission employee concerning his conversations with Ms.
15 Polivy which is contrary to his position today, you can
16 bring that in. That would be relevant.

17 But the fact that the staff differed with Mr.
18 Gordon as to whether restrictive proceeding applies,
19 apparently Mr. Gordon's position was sustained ultimately by
20 the Court of Appeals and the Commission, is totally
21 irrelevant as to whether Mr. Gordon is a credible witness or
22 not. And I reject that.

23 MR. EISEN: Very good.

24 JUDGE CHACHKIN: And the objection is sustained.

25 //